

Findings and Recommendations Pursuant to California Government Code  
3505.4 and 3505.5  
PERB Case # LA-IM-231-M

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In the Matter of an Impasse Between

Imperial Irrigation District

And

Imperial Irrigation Professional & Salaried Employee Association

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For the County:

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For the Union:

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*Factfinding Panel:*

Neutral Chair

David A. Weinberg  
Arbitration Mediation and Conflict Resolution

Union Member

Rafael Ruano, Esq.  
Goyette & Associates

County Member

Mark Meyerhoff, Esq.  
Liebert Cassidy Whitmore

### **PROCEDURAL BACKGROUND**

On December 22, 2016, the Public Employment Relations Board (PERB) notified the undersigned that the Imperial Irrigation District and Imperial Professional Salaried Association (PSA) selected me to serve as the Neutral Chair of the Factfinding Panel, pursuant to the Meyers-Milias-Brown Act. The Panel held a hearing on February 3, 2017, in El Centro, CA. At this hearing the parties presented testimony and evidence to the panel. A pre-hearing conference call was held on January 10, 2017 to discuss the issues to be presented to the Panel. The record was closed on February 22, 2017 after the parties filed reply and sur-reply briefs with the Neutral Chair.

### **RELEVANT STATUTORY PROVISIONS**

This factfinding is governed by recent amendments to the Meyers-Milias-Brown Act<sup>1</sup>. The sections of the amendments that are pertinent to this proceeding are as follows:

3505.4. Unable to effect settlement within 30 days of appointment; request for submission to factfinding panel; members; chairperson; powers; criteria for findings and recommendations

(a) The employee organization may request that the parties' differences be submitted to a factfinding panel not sooner than 30 days, but not more than 45 days, following the appointment or selection of a mediator pursuant to the parties' agreement to mediate or a mediation process required by a public agency's local rules. If the dispute was not submitted to mediation, an employee organization may request that the parties' differences be submitted to a factfinding panel not later than 30 days following the date that either party provided the other with a written notice of a declaration of impasse. Within five days after receipt of the written request, each party shall select a person to serve as its member of the factfinding panel. The Public Employment Relations Board shall, within five days

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<sup>1</sup> AB646

after the selection of panel members by the parties, select a chairperson of the factfinding panel.

(b) Within five days after the board selects a chairperson of the factfinding panel, the parties may mutually agree upon a person to serve as chairperson in lieu of the person selected by the board.

(c) The panel shall, within 10 days after its appointment, meet with the parties or their representatives, either jointly or separately, and may make inquiries and investigations, hold hearings, and take any other steps it deems appropriate. For the purpose of the hearings, investigations, and inquiries, the panel shall have the power to issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence. Any state agency, as defined in Section 11000, the California State University, or any political subdivision of the state, including any board of education, shall furnish the panel, upon its request, with all records, papers, and information in their possession relating to any matter under investigation by or in issue before the panel.

(d) In arriving at their findings and recommendations, the factfinders shall consider, weigh, and be guided by all the following criteria:

(1) State and federal laws that are applicable to the employer.

(2) Local rules, regulations, or ordinances.

(3) Stipulations of the parties.

(4) The interests and welfare of the public and the financial ability of the public agency.

(5) Comparison of the wages, hours, and conditions of employment of the employees involved in the factfinding proceeding with the wages, hours, and conditions of employment of other employees performing similar services in comparable public agencies.

(6) The consumer price index for goods and services, commonly known as the cost of living.

(7) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays, and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

(8) Any other facts, not confined to those specified in paragraphs (1) to (7), inclusive, which are normally or traditionally taken into consideration in making the findings and recommendations.

(e) The procedural right of an employee organization to request a factfinding panel cannot be expressly or voluntarily waived.

3505.5. Dispute not settled within 30 days after appointment of factfinding panel or upon agreement by parties; panel to make advisory findings of fact and recommended terms of settlement; costs; exemptions

(a) If the dispute is not settled within 30 days after the appointment of the factfinding panel, or, upon agreement by both parties within a longer period, the panel shall make findings of fact and recommend terms of settlement, which shall be advisory only. The factfinders shall submit, in writing, any findings of fact and recommended terms of settlement to the parties before they are made available to the public. The public agency shall make these findings and recommendations publicly available within 10 days after their receipt.

(b) The costs for the services of the panel chairperson selected by the board, including per diem fees, if any, and actual and necessary travel and subsistence expenses, shall be equally divided between the parties.

(c) The costs for the services of the panel chairperson agreed upon by the parties shall be equally divided between the parties, and shall include per diem fees, if any, and actual and necessary travel and subsistence expenses. The per diem fees shall not exceed the per diem fees stated on the chairperson's résumé on file with the board. The chairperson's bill showing the amount payable by the parties shall accompany his or her final report to the parties and the board. The chairperson may submit interim bills to the parties in the course of the proceedings, and copies of the interim bills shall also be sent to the board. The parties shall make payment directly to the chairperson.

(d) Any other mutually incurred costs shall be borne equally by the public agency and the employee organization. Any separately incurred costs for the panel member selected by each party shall be borne by that party.

(e) A charter city, charter county, or charter city and county with a charter that has a procedure that applies if an impasse has been reached between the public agency and a bargaining unit, and the procedure includes, at a minimum, a process for binding arbitration, is exempt from the requirements of this section and Section 3505.4 with regard to its negotiations with a bargaining unit to which the impasse procedure applies.

## **BACKGROUND AND RELEVANT FACTS AND FINDINGS**

The Imperial Valley Water District is a public utility providing irrigation water and electricity for residents and businesses in the Imperial and Coachella Valley. There are over 6500 irrigation customers, of which 90% are farmland and agriculture. There are over 150,000 energy customers, many of whom are low income. The median household income in the Imperial Valley is approximately 41,000, and the median value of a home is \$151,600. The unemployment rate is over 18%. The District has 1350 full time employees, of which 361 are PSA members. IBEW represents the largest bargaining unit with 915 members, and an Executive unit represents 17 members.

The District's budget is split into two categories, Energy and Water. In the Energy Department the 2017 revenue and funding budget is estimated at \$521 million, and total expenditures of \$516 million. In the Water Department the 2017 revenue and funding is estimated at \$278 million, and total expenditures of \$275 million.<sup>2</sup> In 2016-2018 the District's expenditures will exceed its revenues that will necessitate a use of its reserves. According to the 2011-2016 Budget documents, there has been a surplus generated every year. While the budget documents do not clearly indicate a reserve account, there appears to be at least \$250 million available above expenses, which can be used for a variety of needs, including emergencies, not budgeted necessary capital projects, and

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<sup>2</sup> District December 20, 2016 Budget Message

energy and water reserves. The District seeks to maintain at least 127 days of cash-on-hand for energy consumption and 150 days for water.

The District provides post employment benefits for medical benefits for retirees and dependents.<sup>3</sup> The District has been meeting their OPEB funding on a pay-as-you-go basis. In 2016 the District Board established an irrevocable trust with CalPERS to pay down prior years OPEB liability and fund future costs. A total of \$51 million will have been placed in the trust by the District as of this factfinding report, with another \$8 million to be paid into the trust each year for the next 15 years.

In 2001 the District and the Association agreed to end their former defined benefit plan and replace it with a defined contribution plan. In 2014 the District agreed to an 8% contribution to the 401(a), and in 2015 a 1% match 401(k) plan was set up for PSA members. Approximately 259 PSA members participate in this plan.

In 2016 IBEW received the increase to 8% for the 401(a) plan, and in 2017 this was raised to 9%. In 2015 PMA members received the increase to 8% in the 401(a) plan and in 2016 received the 1% match 401(k) plan.

In 2015 IBEW received a 2% on schedule increase, PSA received a 1% on schedule, and a 1% 401(k) match. EMA received a 1% on schedule and a 1% 401(a) increase. In 2016 IBEW received a 2% on schedule increase and a 1% 401(a) increase, PSA received a 2.5% on schedule salary increase. EMA received a 1% match to the 401(k). In 2017 IBEW received a 2% on schedule increase and a 1% increase to the 401(a). In 2017 EMA received an off schedule payment of \$1,250. In the five years prior to 2015 the three bargaining parties mostly received different salary and pension increases.

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<sup>3</sup> This benefit was limited for newly hired employees starting in 2013.

The parties did not present to this Factfinding Panel any comparability studies. For the positions that were recruited to be filled in the PSA bargaining unit from 2012-2016 there were over 5000 applicants for approximately 200 open positions. In the past five years 21 individuals left District employment for other employment.

The CPI according to the Bureau of Labor Statistics for the closest area (San Diego) was 2% for the second half of 2016.

The current MOU expired on December 31, 2016. The parties engaged in several bargaining sessions where two items were agreed upon but were unable to reach a complete agreement. There were two items remaining in dispute, wages and pension. The District filed a Declaration of Impasse on September 23, 2016, and after a failed mediation session on December 6, 2016, the parties moved to this factfinding.

At the time of impasse leading up to this factfinding, the party's last offers were as follows:

- 1) District Salary Offer: \$1, 250 one-time off schedule bonus upon ratification.

The PSA Salary proposal is for a 2% on schedule increase.

- 2) District 401(a) Plan contribution: No increase.

The PSA 401(a) Plan contribution: Increase by 1% of employees' salary.

### **ISSUES PRESENTED TO THE PANEL**

The parties stipulated that the two (2) above referenced issues are properly before this Factfinding Panel, for findings and recommendations according to the MMBA statute.

## **POSITIONS OF THE PARTIES**

The following is a brief summary of the parties' arguments to the Factfinding Panel.

### **Association:**

The Association argues that the District's Budget Plan shows the District has had a budget surplus in every year since 2011, and a small surplus budgeted for 2017. Between 2011 and 2016 the District has a total of \$258,335,728 in surplus. Therefore, the District is able to pay the fair increases requested.

The Association argues that the District has not increased its OPED liability in any way over the past years, and has in fact capped its obligation in 2013, when it negotiated a two-tiered retiree medical benefit. The District has always known the OPED liability and only the GASB rules have changed. In fact the District has always had internally reserved cash equal to the total OPED obligation liability. This is in contrast to many other public agencies that do not have cash set aside for these liabilities. The District has not shown any changed circumstances.

The Association argues that the PSA members are not paid 30% more than IBEW members since many IBEW members get significant overtime that PSA members do not receive. In addition PSA members are professional employees with college and other advanced degrees. Many IBEW employees earn more than their PSA supervisors when overtime is factored in. The 2% wage increase given to IBEW members while the PSA gets only a bonus will exacerbate this problem.

The Association argues that since 2011 CPI has increased in the San Diego Region 12.4%. During this time period IBEW has received a total of 12% in COLA and

retirement contributions while PSA has received 8.5%. In addition the equity adjustments negotiated in past contracts affect less employees in PSA than those given to IBEW.

The Association argues that the District costing for the proposed increases to the PSA unit is highly inflated, as the 60% benefit load figure used is not accurate since many benefits are capped and should not be factored in when calculating the cost of a 2% COLA. In any event the District has the ability to pay the requested 2% COLA.

The Association argues that over 58% of PSA unit members are at the top step in their classification, so that the only way a member can get a pay increase is through COLA or a promotion. The Districts claim of steadily rising labor costs is not accurate given that there is a cap on medical benefits, the lack of a defined benefit plan, and a \$2.8 million annual savings from an early retirement program.

The Association argues that they have not requested COLA's that outpace the CPI; in fact they have received less than the increases in the CPI since 2011. In addition the District argument that PSA members received equity adjustments in prior years is proof that those members were underpaid to correct inequity and should not be factored into COLA.

The Association argues that since 2001 when the PSA dropped its defined benefit plan, the District has not kept up with their guarantee made at the time that the defined contribution plan would be better since a 2% COLA would be factored in. The pension/retirement system for PSA members and District employees is not as good as most other irrigation and power districts in California.

The Association argues that their proposal is founded on the principle that its members should keep pace with inflation. In the past the District has argued that they

should not deviate from what it bargained for with other employee groups, the District's current argument is inconsistent.

The Association argues that their proposal for a 2%COLA and a 1% increase to the 401(a) plan is reasonable, in line with CPI and the same increases seen by IBEW and general public employees in the past year, which the District has the ability to pay.

**District Arguments:**

The District argues that the District's Budget Plan shows that for the years 2016-2018 the District's general expenditures will exceed revenues requiring the depletion of reserves to make up the shortfall. This drop in reserves can impact the District's bond rating. Ideally to maintain the bond rating the District must have 127 and 150 days of operating cash for its Energy and Water Department.

The District argues that because of GASB 45 the District will be required to book its unfunded liability for retiree medical at \$220 million. Because of this booking requirement the District set up an irrevocable trust fund with an initial payment of \$51 million by February 2017. They will also make annual payments of \$8 million for the next 15 years. If the District had to raise rates from irrigation customers it would require a 2/3rds approval vote from landowners, which is unlikely. While the Association argument that the District knew about the OPED liability in the past is true, it is also true that the District did not in the past have to make payments for the liability. In fact the District used this reserve fund to pay general operating expenses that it cannot do now. In addition this liability has increased over the years regardless of reducing retirement benefits for newly hired employees.

The District argues that the PSA proposal will have a total cost of \$1.53 million in 2017 that would have to be paid out from the reserves given the current budget. While

PSA disputes the District's calculation of benefit load at 60% of salaries, this is an amount that must be set aside and has been a sound predictor of actual costs for the District. This calculation remains solely within the purview of the Board. The District argues it simply does not have the financial ability to provide on-schedule salary increases and an increase to the 401 plan.

The District argues that the interest and welfare of the consumers weighs against any on schedule or 401 increase, many of whom are low income.

The District argues that it is difficult to compare the PSA member wages and benefits with other comparable public agencies because Imperial County is very remote, has one of the highest unemployment and poverty rates and would not provide a good comparison of possible attrition. While the CPI of San Diego, the closest area available is 2% it may be unreliable for Imperial Valley, which has a much lower cost of living. In the past PSA has received salary and retirement benefits that exceed the CPI in most years.

The District argues they are still one of the highest paying employers in the entire Imperial Valley and from 2014-2016 received 3,180 applications for 128 open positions. The current pay and benefits of PSA members is generous and far above the median household income in the area.

The District believes that the PSA argument that they deserve the same increase as IBEW is not reasonable. First, IBEW members earn much less on average than PSA members. While there are some IBEW members that make more than PSA members, they tend to be highly trained journeyman whom can be lured away to other utilities, and have to work additional hours to make their higher wages. In addition the District does not offer to IBEW the 1% match to the PSA 401(k) plan. If the District were to offer the

PSA the same 9% 401(a) contribution, then the PSA retirement plan would be higher than IBEW members. In addition the PSA members have received the 8% retirement contribution for more years than IBEW, whom just received the 8% in 2016. The other bargaining unit, EMA has received less than PSA in 2017 and many other years. There is no rational for giving PSA the same benefits as IBEW, which were negotiated in 2015. At that time the District did not anticipate that they would have to make a \$51 million payment into an OPED trust. This creates a new situation that is reasonably reflected in a different offer to PSA. The PSA proposal for a total of 3% is higher than granted in other years when the District was not drawing down its reserves.

The District argues that their proposal for an off schedule lump sum payment is reasonable and provides a modest purchasing power for employees give the fiscal constraints of the District.

### **RECOMMENDATIONS**

The Neutral Factfinder chosen by the parties believes that the statute under which this factfinding takes place is best viewed as an extension of the collective bargaining process. The best outcome of this factfinding process would be a negotiated agreement between the parties. The intent of these recommendations is to provide a framework for the parties to settle their dispute with an agreement. The statute lays out a set of criteria that is to guide the panel in making their findings. These criteria represent many of the basic factors that inform the parties when they are negotiating an agreement.

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In this factfinding the two issues separating the parties are the form and amount of a salary increase and an increased contribution to the 401(a) by the District. The Association cites two main arguments in support of their final proposal. First and

foremost is their belief that their members should receive no less than what the other major Union (IBEW) received from the District. In addition they believe that the Association's proposal is supported by the increase in the CPI, which should necessitate a COLA increase that they believe the District can afford. While it is understandable that the Association believes that they should receive no less than IBEW, the Neutral Chair does not believe that in this case their argument is supported by the facts and the criteria of the MMBA. The history of bargaining in the District and the various MOU's do not show a consistent practice of awarding equal salary and benefits to the various employee Unions and Associations. In some years IBEW received less than PSA and in some years more. This is also true of the manager's association (EMA). Furthermore, the contracts have not always been of the same length and similar expiration date.

The different Unions and Associations in the District have different skill sets and issues related to recruitment and retention, which are central to determining proper salary and benefit proposals. The PSA in this case has not made a sufficient case that their members are not comparably compensated with other jurisdiction employees with whom they compete for employment. It is true that some members of IBEW may make more than the PSA members who have higher degrees and supervise them. However this does not necessarily indicate that the PSA unit should always be more compensated. It is not unusual in the public sector to have certain employees whom are needed to work significant overtime hours make more than their supervisors. Finally, in this case the raises awarded to IBEW were negotiated at a time when the District was in better financial shape, and was the product of a longer agreement. It should also be noted that the other smaller Association received a contract similar to what the District is offering PSA, which undercuts the argument for similar contracts.

The other central argument of the Association is that the District proposal of an off salary increase does not keep up with the CPI and the rate of inflation. On this point I believe the Association's argument has merit. The latest available CPI shows a 2% increase and currently it is expected to run slightly higher than that. MMBA cites cost of living as a factor to be considered in factfinding. While the District argument that the cost of living in the Imperial Valley is probably less than San Diego has truth, the District proposal does not meet the needs for any inflationary pressure. The Neutral Panel member believes that for sound and stable labor relations to be present there should be salary and benefit increases somewhat related to increases in the cost of living, unless there are financial burdens that prevent these increases. The District has raised legitimate new conditions that have reduced the financial health due to the need to set up a trust with significant payments for future retiree medical costs. These payments were not present when they negotiated the IBEW contract and can be taken into consideration when it is making new proposals. However, given the overall financial health of the District and the presence of significant reserves it cannot claim an inability to pay. In addition, while the District has the right to set its own calculations for roll up costs associated with salary increases, the 60% figure they use for costing is probably excessive. While there is no set formula for every entity, the 60% figure used by the District is much higher than other public entities I am familiar with especially given that the District does not have significant liabilities associated with defined pension plans. It is reasonable for the District given that they will need to dip into reserves for the next couple of years to moderate their salary proposal to the PSA, however the financial picture does not in my opinion necessitate no increase to the salary schedule given the inflationary pressures faced by employees. Therefore, I believe a 1% on schedule increase is warranted and affordable by the District. It should be noted that the implementation of the wage increase in 2017 is not retroactive, which lessens the total

cost to the District for the budget year since it would not be implemented until mid-March. According to the District figures, this increase for salary only would separate the parties wage proposal to less than \$140,000 apart for the fiscal year.

For the same reasons cited above I believe a 1% increase to the 401(a) is also recommended. While I indicated that with respect to wages I do not find a compelling interest to maintain parity between different bargaining units in the District, it is more important to maintain consistency between units when it comes to pension benefits. Ease of administration is enhanced when retirement programs have consistent procedures and formulas.

A 1% salary increase and an increase of 1% to the 401(a) I believe is warranted based on the evidence presented and the criteria listed in the MMBA. While this increase is less than what the IBEW received, there are new circumstances that warrant this lesser contract proposal, which should meet the inflationary pressures faced by employees. Hopefully this compromise recommendation can provide a path for the parties to reach a negotiated agreement.

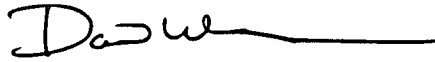
The Neutral Panel member is recommending the following proposal. These recommendations are being made after working with the parties to craft a contract settlement, and represents my attempt to help the parties fashion that agreement. The following represents my recommendations on each open item.

- 1) Salary Recommendation: I recommend a 1% on salary increase effective March 15, 2017. This recommendation is supported by the criteria of the MMBA.

- 2) 401(a) Increase Recommendation: I recommend a 1% increase to the 401(a), effective March 15, 2017. This recommendation is supported by the criteria of the MMBA.

The Neutral Member of this Panel agrees that these recommendations are in accord with California Government Code Sections 3505.4 and 3505.5, and endorses these recommendations.

Dated March 8, 2017

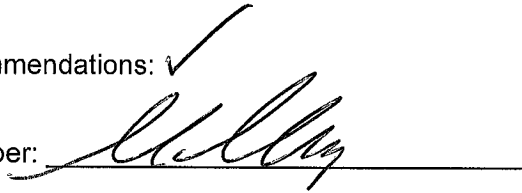


David A. Weinberg: Neutral Chair, Factfinding Panel

I concur with recommendations:

I dissent with recommendations: ✓

District Panel Member:



I concur with recommendations:

I dissent with recommendations:

Association Panel Member: \_\_\_\_\_

***THE PARTIAL DISSENT OF THE DISTRICT'S FACTFINDING PANEL MEMBER TO  
THE FINDINGS AND RECOMMENDATIONS OF THE FACTFINDING NEUTRAL***

**PERB Case # LA-IM-231-M**

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In the Matter of an Impasse Between

Imperial Irrigation District

And

Imperial Irrigation Professional & Salaried Employee Association

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As the factfinding panel member appointed by Imperial Irrigation District, I offer the following partial dissent to the Findings and Recommendations of the Neutral Factfinder in this matter.

I agree with the Neutral's finding that there is not a compelling interest to maintain parity in salary between the District and IBEW. However, I disagree that the off-schedule salary increase of \$1,250 offered by the District does not keep up with the CPI and the rate of inflation. First, PSA's compensation increases<sup>1</sup> over the last four years have *exceeded* CPI and therefore, their salary is already ahead of CPI. Second, the \$1,250 gives each member an amount that preserves purchasing power for this year. Indeed, the average salary in the PSA unit is \$100,000. The lump sum is equivalent to a 1.25% salary increase for this year, albeit not a continuing increase.

Third, I disagree that the District has "significant reserves" and has an ability to pay the salary increase requested by PSA. The Neutral cites that the Energy Department is expected to have revenue and funding of \$521 million, and \$516 million in expenditures. The Neutral cites from the "Budget Message" which is a cover letter to the District's 2017-2018 Budget Plan. Using the Budget Message is misleading because the \$521 million of revenue and funding includes a transfer of \$10.9 million from the District's unrestricted reserves in order to balance the Department's budget. The same is true of the revenue and funding for the Water Department wherein the "Budget Message" includes a transfer of \$29 million out of reserves to balance the Department's budget.

Rather, the District's budget shows a dramatic increase in the drawing down on reserves in a three-year span, if not longer. An on-going salary increase at this time is financially irresponsible and does not make sense when it would essentially come from reserves, not to mention that a raise in water or electricity rates cannot be a solution. Moreover, in February the District completed paying \$51 million to a new OPEB trust which was funded by general revenue, a one-time loan and reserves. The District will have an on-going \$19.3 million normal contribution to the OPEB trust each year for the next 15 years. Thus, the revenue over expenditures, as set forth

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<sup>1</sup> Increases to salary or a combination of increases to salary and retirement plan contributions.

in high level detail of the Budget Plan provides a better picture of the District's overall financial status which shows expenditures exceeding revenue in 2016, 2017 and 2018.

Accordingly, I dissent to the Neutral's recommendation of a 1% salary increase.

I also disagree with the Neutral's finding that there is a compelling interest to maintain parity between the different bargaining units when it comes to pension benefits. Nonetheless, I believe the Neutral's recommendation will *create* disparity between PSA and IBEW. Currently, both units receive a 9% employer contribution to the unit member's retirement plans. The only difference is that IBEW members receive the 9% entirely on the 401(a), whereas PSA members receive 8% on the 401(a) plan and 1% on the 401(k) plan as a match. Both plans are defined contribution plans. The recommendation would provide PSA with a total employer contribution to the retirement plans of 10% versus IBEW's 9%.

Accordingly, I dissent to the Neutral's recommendation of a 1% increase in the employer contribution to each PSA member's 401(a) plan.

In summary, I dissent to the Neutral's recommendations of a 1% on-schedule salary increase and a 1% increase in the employer contribution to the 401(a). I believe the District's offer of \$1,250 lump sum payment to each member balances the respective needs of both parties.

Respectfully submitted,



Mark Meyerhoff

Paul Q. Goyette  
Gary G. Goyette  
Daniel P. Thompson  
Rafael Ruano  
Brett F. Sherman  
David J. Garcia  
Nicole Valentine  
Heather N. Phillips  
Richard P. Fisher  
Charles D. Caraway  
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March 17, 2017

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Re: Dissent and Concurrence on Final Fact Finding Panel Recommendations

Mr. Weinberg and Mr. Meyerhoff:

In response to the Findings and Recommendations prepared by the Neutral member of the Fact Finding Panel, Mr. David Weinberg, I Dissent with the Salary Recommendation and Concur with the 401(a) Increase Recommendation.

As to the Salary Recommendation, I agree with much of Mr. Weinberg's findings and rationale. However, with respect to the OPEB liability and the District's contention that it now faces a changed circumstance, Mr. Weinberg says the following:

"The District has raised legitimate new conditions that have reduced the financial health due to the need to set up a trust with significant payments for future retiree medical costs. These payments were not present when they negotiated the IBEW contract and can be taken into consideration when it is making new proposals." (Findings and Recommendations, page 14)

As argued by the PSA in the hearing and supported in its brief and reply brief to the panel, there is ample evidence that the District not only was aware of the full extent of the OPEB liabilities it faced, but that it had been setting aside unrestricted cash reserves to cover such liabilities. This is evidenced by the staff report to the District Board in support of the establishment of the PERS Irrevocable Trust that fail to include any mention of the significant financial impacts that the District is now arguing this action actually had on the District. To be

clear, when the District went ahead and created the OPEB trust, it failed to recognize any significant fiscal impact. However, mere months later, the District argued in the Fact Finding process that this action actually resulted in significant fiscal impacts that preclude the District from making the type of modest salary adjustments that the PSA is proposing.

Thus, I cannot concur with the Salary Recommendation set forth by Mr. Weinberg as I believe that it fails to account for the fairly transparent efforts by the District to justify their bargaining position by purposely misleading the fiscal impact that the creation of the OPEB trust actually had on the District. Not only was the District aware of its OPEB liability since well before 2015 when it negotiated its last agreement with IBEW, but the extent of the impact on the District, given its explicitly stated cash reserves to pay for these liabilities, was merely a matter of moving cash from an unrestricted account to the OPEB trust. The reason that the District Board was not told that there would be a significant fiscal impact of creating the OPEB trust is because there was not, in fact, any significant impact.

Respectfully Submitted,



Rafael Ruano  
Goyette & Associates, Inc.